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An Equal Opportunity Employer

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TO: Michael Mazerov, Director of Information  
FROM: Ricky A. Bejarano, New Mexico  
SUBJECT: Comments on Sales & Use Tax Nexus Guideline Draft  
DATE: June 2, 1997

*Ricky A. Bejarano*

Attached are comments in the form of a memorandum to me from Diane Rossbach of our Nexus Unit.  
I will be attending both sessions of the Dallas meeting.

Post-it® Fax Note 7671		Date	6/2/97	# of pages	2
To	Theresa	From	Ricky A. Bejarano		
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## Memorandum

DATE: May 30, 1997

TO: Ricky Bejarano

FROM: Dianne Rossbach

RE: MTC Nexus Guideline Notes

I am glad the MTC has presented such a broad interpretation of nexus in these guidelines. A few general concerns...

- 1) Many of the examples included in the Draft go well beyond audit positions we (TRD) have taken thus far, notably in the area of Agent for Compensating Tax. We have not been very aggressive towards these taxpayers.
- 2) I am also concerned about states essentially competing for the same dollars where the case for an in-state presence could be made by more than one state. Using a security interest to determine nexus should probably be framed as an element of the taxpayer's regular business activity or essential to generating and maintaining the market.
- 3) Adopting these guidelines as written could affect our ability to accept some of the Voluntary Agreements that we do now. But the law is restrictive in many other ways, so I'm not sure we would notice the decline in agreements.

### Line items...

lines 55-56, 287-forward Setting a *de minimis* standard for sales & use tax erodes the essential differences between these taxes and income taxes. This discussion is an application of PL 86-272 to sales and use tax. Will this language increase the scope for income tax or reduce the scope for sales and use? Mixing the transaction level of taxation with the summary level may reduce the tax dollars available for states and increase competition for those dollars. The *de minimis* standard has not been the most successful concept to implement at the Corporate Income Tax level, let alone on this one.

line 140 "without limiting the foregoing" does not add clarity

line 196 there should be a paragraph for intangible property, we need language that deals with the evidence of an economic presence

line 365 may need a definition of "clear and cogent evidence"

line 366-369 nexus exists in 12 month batches ... we may have a problem integrating it with fiscal years... recommend using the normal transaction reporting period or a calendar year. And New Mexico should add that it will look at business activity retroactively to determine if a pattern exists. *De minimis* activity is not so much a certain dollar level or a specified number of sales, as it is a pattern of business operation. Several of the examples on page 5 bring out the concepts of systematic activity, the intent to act in a certain manner and the relationship to the enterprise.

line 381 as a public utility

line 385 contract carrier narrowly defines acceptable shipments ... "exclusive" may be misleading

line 391 agree definition may not be needed

line 405 or periodically

line 439 insert adopting state's definition of use

Sorry that this is a day late. It's been pretty exciting here in TCB the last few days. Let me know if you have questions or comments.